U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 15 2013 OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a biotechnology scientist. The petitioner has been the director of the since 1999. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Before the filing of the appeal, attorney represented the petitioner. Shipping documents in the record show that the initial filing and responses to subsequent notices all originated from office. Subsequently, however, did not prepare or sign the Form I-290B Notice of Appeal; the petitioner's personal statement on appeal includes no mention of legal representation; and the petitioner mailed the appeal from his own address. Form I-290B advises that attorneys "must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative" to the appeal, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form. Therefore, the record contains no evidence that Mr. Behlendorf is still the petitioner's attorney of record. The AAO will therefore consider the petitioner to be self-represented.

On appeal, the petitioner contends that the director arrived at unwarranted conclusions, and that "[t]he denial is based on racial discrimination."

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 12, 2012. In an accompanying statement, the petitioner provided background information about biomedical research. This information establishes the intrinsic merit and national scope of the occupation, but does not address the petitioner's individual eligibility for the waiver. To meet the latter requirement, the petitioner described his past work, referring to himself in the third person. The petitioner claimed to have completed "hundreds" of projects, among which "there are many highly recognized projects [that] must be noticed" as "breakthroughs of future technology." The petitioner identified only two specific examples:

> **First in the world:**
>
> 1. Src protein induces phosphorylation of merlin:
>
> . . . In plain English, he discovered which gene prohibits [neurofibromatosis] tumor cell [growth] in what degree. . . .
>
> **First in Korea:**
>
> 1. The effects of ionotropic and metabotropic glutamate agonists of the catfish retinal neurons
>
> We will explain in plain English so you can grasp an idea. [Compared to] other organs, [the] human eye or retina is more like human brain. It transmits signals just like [the] brain. However, the investigation and therefore recordings of which cell does what is not yet completely recorded. The alien's investigation is one of the few that register for the record.

"The effects of ionotropic and metabotropic glutamate agonists of the catfish retinal neurons" is the title of the petitioner's 1997 master's thesis. "Src protein induces phosphorylation of merlin" is the title of the beneficiary's 2003 doctoral dissertation. With respect to the petitioner's assertion that he is the "first in the world" to report his particular findings, the petitioner has not shown that graduate dissertations typically duplicate findings already known in the field. Originality is not synonymous with importance or significance.

The petitioner stated that he "opened his [own] company in 1999," and since then "has been working as a medical scientists [*sic*] investigating and developing bio technology." The petitioner stated his intention to start a biotechnology company in the United States, using "advanced research technique he developed over 20 years." He stated that his work "eventually will lead to mass production of the medicine and create more jobs for U.S. workers by producing it," but he did not identify "the medicine." The petitioner stated that "he will attract foreign investments to build factories for his already developed products," which, again, he did not identify. The petitioner stated that the "increasing backlog and administrative processing time of labor certification" would put the United States at a disadvantage in "this timely battle for the leading edge opportunity to pursue America being world leader in biotechnology."

The petitioner claimed "many nationally acclaimed awards," but identified only one claimed award, stating: "he won the '2011 Outstanding Associate' from for his outstanding investigation in the field of bio technology." The award certificate stated that the petitioner "has been awarded for contributing greatly to the establishment of the medical delivery system by the active mutual exchange of investigation as the associate investigator of The petitioner submitted no evidence to support the claim that the "2011 Award for Outstanding Associate" is a "nationally acclaimed award."

The petitioner stated that he received "National Recognition [from the] in the form of "a designation for National Disease Control." A certificate bearing the seals of the Control and Prevention, and the refers to as a "National Designated Sentinel Clinic." The petitioner submitted no background information about this designation. Therefore, the petitioner has not shown that the certificate is a form of "recognition" rather than an administrative designation for which any given clinic could qualify by meeting certain requirements.

The petitioner asserted that, as a "Keynote Speaker of " he influenced his peers "so that others can benefit from" his work. The only evidence that the petitioner submitted to support this claim consists of a photocopied "Speaker" ribbon from the This evidence does not provide any context about the gathering where the petitioner spoke, or the nature or significance of his presentation.

The director issued a request for evidence on May 17, 2012. The director instructed the petitioner to document "a past record of specific prior achievement that justifies projections of future benefit to the national interest," including evidence that other researchers have cited the petitioner's published work. In response, the petitioner, again referring to himself in the third person, stated:

> His research endeavor has never stopped to date. In fact, in U.S., he will continue his research work focused on finding advanced medical treatment for ocular disorder. . . . [H]e has been involv[ed] in [a] research team [that] published 3 papers in year of 2012. Considering this kind of work takes at least 2-3 years to study before finally coming to li[f]e, many experts find it extraordinary.

With respect to the claim that the petitioner "has never stopped" conducting research, the petitioner does not claim or establish that he published anything between 1999 and 2012. The petitioner did not submit copies of any new articles or other evidence of their publication. Therefore, the petitioner's response to the request for evidence did not include any support for his claim of multiple recent publications.

The petitioner asserted that a citation record "is probably the most proper document to prove alien's influence to other peers all over the world. In fact, his research papers are being cited as we speak . . . by worldwide experts." The petitioner submitted a printout from the Google Scholar search engine showing four citations of one of his articles from 1996. The printout did not identify the four

citing articles. The petitioner submitted copies of two citing articles, both from 2009 and both in the Korean language. The petitioner did not identify the other two citing articles. The omission is significant because Google Scholar sometimes contains duplicate listings, for example listing a foreign-language article and its English translation as two separate articles. Furthermore, because the submitted citing articles are in Korean with no English translation, the record does not establish the context of the citations. *See* 8 C.F.R. § 103.2(b)(3). For the above reasons, the petitioner documented only two unique citations of his published work between 1996 and 2012.

Regarding his plans for the future, the petitioner stated:

> He has many personal assets which he will bring to US to support him and his family. . . . His property's current market value is approximately $1.6 Million US. . . . Also, cash from savings account and disposition from securities are totaled $80,000.
>
> Therefore, the total money alien will bring to US is approximately $2.4 Million US.

The petitioner submitted copies of bank and real estate records to support the above figures.

The petitioner submitted two letters from faculty members of the Department of Ophthalmology at the , associate professor and director of the department, stated:

> [The petitioner's] contribution to a range of issues in biomedical science[] demonstrates his valuable capacity for novel and relevant research with direct applications to the medical field. . . .
>
> [The petitioner] is one of a select few in his field who have the demonstrated ability and vision to significantly improve how a nation provides healthcare.
>
> One of the most significant finding[s] which I believe is noteworthy is "Src protein induces phosphorylation of merlin.". . . [T]he mechanism by which merlin exerts its tumor suppressor activity is not well understood. The alien investigated the regulation of merlin function and establish[ed] a framework for elucidating tumorigenic mechanisams [*sic*]. Because of his discovery, other scientists can benefit by reducing or eliminating unnecessary time finding which gene prohibits tumor cell. This is a first in the world discovery. . . .
>
> The number of publications alone is telling as to his superior skill in this field. Given [the petitioner's] past productivity, I have every expectation that he will continue to be productive upon arrival in the U.S., and that our field will greatly benefit from a researcher who can contribute so much at such a fast pace.

Regarding the last quoted paragraph, did not specify the number or frequency of the petitioner's publications. The petitioner himself claimed only three publications on his *curriculum*

vitae: two articles, both published in the in 1996, and one book, published in 1999. The petitioner did not identify or submit any subsequent published work. The petitioner's initial submission, therefore, provided no credible context for reference to the "fast pace" of the petitioner's output of published work.

stated:

> [The petitioner's] discovery on finding a cause of retinal vein occlusion of noteworthy. RVO (retinal vein occlusion) is a common vascular disorder of the retina and is one of the most common causes of blindness after diabetic retinopathy. . . . However, the pathogenesis and management of this disorder remains somewhat of an enigma. However, [the petitioner's] contributions to the field of retinal vein occlusion are original and of utmost significance, and have extremely useful applications in the field of medical science. His work in this area is groundbreaking because it is leading the generation of novel therapy for retinal diseases which in result [*sic*] prevention from the blindness. His article titled is the example. [The petitioner] discovered that multiple myeloma is a malignant proliferation of the atypical plasma cells which usually involves antibody synthesis in the immune system. . . . [The petitioner] discovered a cause of multiple myeloma with hyperviscosity syndrome who presented with central retinal vein occlusion in both eyes.
>
> [The petitioner's] research has already considerably benefited the United States. His contributions to this area far exceed those of his peers that are employed in the same field. He has served as a corresponding author to nationally renowned journals. Also, [the petitioner] serves as committee member to professional associations such as the Further, [the petitioner's] research clinic has [been] designated as the Disease Control and Prevention Center by the One cannot become a member of these organizations without making outstanding achievements in the respective fields.

The petitioner did not submit first-hand documentary evidence of the membership requirements of the above-named organizations. Therefore, assertions regarding those requirements are uncorroborated. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

On August 27, 2012, the director issued a notice of intent to deny the petition. The director stated that the petitioner had established the intrinsic merit of his occupation but had not met the other prongs of the *NYSDOT* national interest test. Regarding the petitioner's published work, the director noted that the petitioner had not documented any publications after 1996, and that the petitioner's

minimal citation record did not establish "an unusual level of interest [in his work] as to distinguish him from his peers." The director acknowledged the petitioner's two witness letters, but noted that both witnesses are on the faculty of the university where the petitioner obtained all of his degrees, and therefore their statements do not establish wider influence.

In response, the petitioner submitted copies of previously submitted materials, and stated: "You stated that alien's journals have been cited a total of 4 times, but, you counted only Google Scholar citation record sheet and left out domestically cited ones." The petitioner submitted evidence of three further citations, all in Korean-language journals. The three newly submitted articles show publication dates of 1997, 2004, and 2005, respectively. Prior to this submission, the petitioner had documented no more than four citations, and therefore the director's assertions in the August 2012 notice accurately reflected the evidence of record at the time of that notice. With the new evidence, the petitioner had documented five citations, an increase of one over the four previously claimed.

By claiming a distinction between "domestically cited" articles and those listed on Google Scholar, the petitioner implied the existence of further citing articles published outside Korea. The petitioner did not, however, document the existence of such articles or establish that the Google Scholar citation count included any articles published outside Korea.

The petitioner submitted copies of three new English-language papers, naming him as co-author. also co-wrote all three papers.) The papers are in manuscript form, and the petitioner submitted no evidence that any journal had published the articles or accepted them for publication. The petitioner also submitted, for the first time, copies of his two articles from 1996. These articles are in Korean, but include English abstracts. Four of the papers are case studies, in which the co-authors discussed one particular instance of patient treatment. Such case studies have their place in medical literature, because they can provide guidance to other physicians, but the petitioner has not demonstrated that they constitute research. One of the two 1996 papers, on the other hand, documented a research project that "compared postoperative visual outcome and corneal refractive power" on "91 eyes" following photorefractive keratotomy (a type of laser eye surgery). The petitioner did not document any citations of the research paper; all five documented citations refer to a 1996 case study ('

The director denied the petition on December 14, 2012. The director found that the petitioner had not shown that his intended work in the United States would be national in scope. The director stated: "An alien cannot self-petition under this classification in the hope that he or she will secure an employer as a sponsor in the future." The director cited the regulation at 8 C.F.R. § 103.2(b)(12) and supporting case law relating to the assertion that the petitioner must be eligible for the benefit sought at the time of the petition's filing.

The director noted the petitioner's claim that he "will bring over $2.4 million dollars of his money to U.S.," but found an arithmetical error in the petitioner's calculations. Specifically, the sum of "$1.6 million and $80,000 is not $2.4 million. It is in fact $1.68 million. . . . [T]here is a significant difference of $720,000 between the amount claimed and the evidence provided." The director

stated: "Even if the Service were to assume that the beneficiary would be able to liquidate all of his assets in Korea the Service finds it very unlikely that the beneficiary would be able not to only pay for his relocation and settlement to the United States but also be able to set up a proper research lab."

The director concluded that the petitioner had not explained "how he will be able to achieve his ambitious business plans in the United States. It is simply not enough to assert that, given the petitioner's background, he is sure to succeed in the United States and serve the national interest." The director found an "absence of coherent evidence to show what, exactly, the petitioner intends to do in the United States and how he intends to do it." Absent such evidence, the director found that the petitioner had not established that his "proposed employment will be national in scope through his as of yet [not] started business."

The director also repeated the earlier assertion that the petitioner had not shown that his publication or citation history stood out in the field. The director stated that the petitioner had documented minimal citations, and that "The citations . . . as well as the submitted articles are all from Korea and no evidence was . . . provided to show that the petitioner has been cited internationally."

On appeal, the petitioner states:

> The denial is based on racial discrimination by [the] director. . . . His decision is extremely opinionat[ed and] has nothing to do with facts. Further, he stated a bunch of legal statu[t]es to make [an] adverse decision [on] my case, however, his own words have no ground of legal statu[t]es. . . .
>
> Based on his wording[], I cannot express enough that the decision by [the director] is based on prejudice and therefore, I am certain that all other evidences I submitted had not [been] reviewed properly. Further, it is discrimination based on ignorance of nationality (Japanese people have tendency of ignoring other Asians, especially Koreans because they once occupied the country as their colony).

In basing much of the appeal on a claim of "ignorance of nationality," the petitioner appears to have assumed, based on the director's surname ( ), that the director is Japanese. He cites no other reason for that assumption, and the record contains no evidence of the director's ethnic origin. Even if the director were Japanese, the petitioner has not established personal bias on the director's part.

Aside from allegations of racial discrimination, the petitioner devotes one paragraph of his appellate statement to the merits of the petition. The petitioner states: "I am a medical doctor in Korea. There are only 70,000 medical doctors actively working to date out of out of 50 million population. My position itself proves and establishes extreme success in Korea: I belong to top 0.14%." The petitioner submits no evidence to support these claimed figures, but even if he had done so, he has failed to establish that all medical doctors constitute the "top" of the Korean population.

Under section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), physicians are members of the professions, and section 203(b)(2)(A) of the Act subjects members of the professions to the job offer

requirement. Section 203(b)(2)(B)(ii) of the Act established a waiver for certain physicians practicing in designated shortage areas, but the petitioner has not claimed eligibility under that specialized provision of law or submitted the evidence required under the implementing regulations at 8 C.F.R. § 204.12.

Furthermore, whatever the petitioner's credentials as a physician (specifically an ophthalmologist), he originally based his waiver application on his intended career as a "biotechnology scientist," a term that is not synonymous with "physician." Operating an ophthalmology clinic does not establish a track record in biotechnology research, and competence in one field does not guarantee or imply success in the other.

Regarding the director's assertion that "the Service finds it very unlikely that the beneficiary would be able not to only pay for his relocation and settlement to the United States but also be able to set up a proper research lab," the petitioner states: "This statement is the personal opinion of [the director]. It has nothing to do with actual facts. Who is he judging me and my plan? Does he have any idea how much it would cost to set up a personal research lab?"

In this proceeding, there is no presumption of eligibility that the director must rebut. Rather, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has asserted his intention to sell $1.6 million worth of property in Korea, and use the money to fund research in the United States, but he provided almost no information or evidence regarding his specific plans, instead relying on general statistics about biotechnology. There is no blanket waiver for biotechnological researchers, whether or not the petitioner intends to fund his research with his own money. It is certainly possible for a researcher to qualify for the waiver, whatever the specific circumstances of his or her employment, but it cannot suffice for the petitioner to claim that he will conduct influential (and economically beneficial) research once he arrives in the United States. The petitioner has not demonstrated that his prior research career has been particularly influential, or even consistently active.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.